



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB1572

by Rep. Lou Lang

SYNOPSIS AS INTRODUCED:

205 ILCS 305/8

from Ch. 17, par. 4409

Amends the Illinois Credit Union Act. Provides that the Department of Financial and Professional Regulation may assess a civil penalty against credit unions only when the Secretary of Financial and Professional Regulation reasonably determines, based on objective facts and an accurate assessment of applicable legal standards, that the credit union has committed a violation of the Act, any rule adopted in accordance with the Act, or any order of the Secretary issued pursuant to his or her authority under the Act or has engaged or participated in any unsafe or unsound practice, and that the violation or unsafe or unsound practice has directly resulted in a substantial and material financial loss or created a reasonable probability that a substantial and material financial loss will directly result, or that violation or unsafe or unsound practice constituted willful misconduct and a material breach of fiduciary duty of any director, officer, or committee member of the credit union. Provides that civil penalty orders are confidential supervisory information and shall be prohibited from disclosure to any person, except that once such an order is a final administrative decision of the Department and has been adjudicated to finality, a concise syllabus of the order may be posted on the Department's official website. Effective immediately.

LRB098 09750 MGM 39899 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Credit Union Act is amended by
5 changing Section 8 as follows:

6 (205 ILCS 305/8) (from Ch. 17, par. 4409)

7 Sec. 8. Secretary's powers and duties. Credit unions are
8 regulated by the Department. The Secretary in executing the
9 powers and discharging the duties vested by law in the
10 Department has the following powers and duties:

11 (1) To exercise the rights, powers and duties set forth
12 in this Act or any related Act. The Director shall oversee
13 the functions of the Division and report to the Secretary,
14 with respect to the Director's exercise of any of the
15 rights, powers, and duties vested by law in the Secretary
16 under this Act. All references in this Act to the Secretary
17 shall be deemed to include the Director, as a person
18 authorized by the Secretary or this Act to assume
19 responsibility for the oversight of the functions of the
20 Department relating to the regulatory supervision of
21 credit unions under this Act.

22 (2) To prescribe rules and regulations for the
23 administration of this Act. The provisions of the Illinois

1 Administrative Procedure Act are hereby expressly adopted
2 and incorporated herein as though a part of this Act, and
3 shall apply to all administrative rules and procedures of
4 the Department under this Act.

5 (3) To direct and supervise all the administrative and
6 technical activities of the Department including the
7 employment of a Credit Union Supervisor who shall have
8 knowledge in the theory and practice of, or experience in,
9 the operations or supervision of financial institutions,
10 preferably credit unions, and such other persons as are
11 necessary to carry out his functions. The Secretary shall
12 ensure that all examiners appointed or assigned to examine
13 the affairs of State-chartered credit unions possess the
14 necessary training and continuing education to effectively
15 execute their jobs.

16 (4) To issue cease and desist orders when in the
17 opinion of the Secretary, a credit union is engaged or has
18 engaged, or the Secretary has reasonable cause to believe
19 the credit union is about to engage, in an unsafe or
20 unsound practice, or is violating or has violated or the
21 Secretary has reasonable cause to believe is about to
22 violate a law, rule or regulation or any condition imposed
23 in writing by the Department.

24 (5) To suspend from office and to prohibit from further
25 participation in any manner in the conduct of the affairs
26 of his credit union any director, officer or committee

1 member who has committed any violation of a law, rule,
2 regulation or of a cease and desist order or who has
3 engaged or participated in any unsafe or unsound practice
4 in connection with the credit union or who has committed or
5 engaged in any act, omission, or practice which constitutes
6 a breach of his fiduciary duty as such director, officer or
7 committee member, when the Secretary has determined that
8 such action or actions have resulted or will result in
9 substantial financial loss or other damage that seriously
10 prejudices the interests of the members.

11 (6) To assess a civil penalty against a credit union
12 ~~for a violation of this Act, any rule adopted in accordance~~
13 ~~with this Act, any order of the Secretary issued under his~~
14 ~~or her authority under this Act, or any other action that~~
15 ~~in the Secretary's discretion is an unsafe or unsound~~
16 ~~practice~~ provided that:

17 (A) the Secretary reasonably determines, based on
18 objective facts and an accurate assessment of
19 applicable legal standards, that the credit union has:

20 (i) committed a violation of this Act, any rule
21 adopted in accordance with this Act, or any order
22 of the Secretary issued pursuant to his or her
23 authority under this Act; or

24 (ii) engaged or participated in any unsafe or
25 unsound practice;

26 (B) before a civil penalty is assessed under this

1 item (6), the Secretary must make the further
2 reasonable determination, based on objective facts and
3 an accurate assessment of applicable legal standards,
4 that the credit union's action constituting a
5 violation under subparagraph (i) of paragraph (A) of
6 item (6) or an unsafe and unsound practice under
7 subparagraph (ii) of paragraph (A) of item (6):

8 (i) directly resulted in a substantial and
9 material financial loss or created a reasonable
10 probability that a substantial and material
11 financial loss will directly result; or

12 (ii) constituted willful misconduct and a
13 material breach of fiduciary duty of any director,
14 officer, or committee member of the credit union;

15 Material financial loss, as referenced in this
16 paragraph (B), shall be assessed in light of
17 surrounding circumstances and the relative size and
18 nature of the financial loss or probable financial
19 loss. Certain benchmarks shall be used in determining
20 whether financial loss is material, such as a
21 percentage of total assets or total gross income for
22 the immediately preceding 12-month period. Absent
23 compelling and extraordinary circumstances, no civil
24 penalty shall be assessed, unless the financial loss or
25 probable financial loss is equal to or greater than
26 either 1% of the credit union's total assets for the

immediately preceding 12-month period, or 1% of the credit union's total gross income for the immediately preceding 12-month period, whichever is less;

(C) ~~(A)~~ before a civil penalty is assessed under this item (6), the credit union must be expressly advised in writing of the:

(i) specific violation that could subject it to a penalty under this item (6); and

(ii) the specific remedial action to be taken within a specific and reasonable time frame to avoid imposition of the penalty; ~~-~~

(D) Civil penalties assessed under this item (6) shall be remedial, not punitive, and reasonably tailored to ensure future compliance by the credit union with the provisions of this Act and any rules adopted pursuant to this Act;

(E) ~~(B)~~ a credit union's failure to take timely remedial action with respect to the specific violation may result in the issuance of an order assessing a civil penalty up to the following maximum amount, based upon the total assets of the credit union:

(i) Credit unions with assets of less than \$10 million..... \$1,000

(ii) Credit unions with assets of at least \$10 million and less than \$50 million \$2,500

(iii) Credit unions with assets of at least \$50

1 million and less than \$100 million \$5,000

2 (iv) Credit unions with assets of at least \$100
3 million and less than \$500 million \$10,000

4 (v) Credit unions with assets of at least \$500
5 million and less than \$1 billion \$25,000

6 (vi) Credit unions with assets of \$1 billion
7 and greater \$50,000; and

8 (F) ~~(C)~~ an order assessing a civil penalty under
9 this item (6) shall take effect upon service of the
10 order, unless the credit union makes a written request
11 for a hearing under 38 IL. Adm. Code 190.20 of the
12 Department's rules for credit unions within 90 days
13 after issuance of the order; in ~~in~~ that event, the
14 order shall be stayed until a final administrative
15 order is entered; notwithstanding any other provision
16 of this Act or any other law to the contrary, civil
17 penalty orders are confidential supervisory
18 information pursuant to Section 9.1 of this Act and
19 shall be prohibited from disclosure to any person,
20 except that once such an order is a final
21 administrative decision of the Department and has been
22 adjudicated to finality, a concise syllabus of the
23 order may be posted on the Department's official
24 website. ~~and~~

25 ~~(D) in the event a credit union commits a~~
26 ~~subsequent violation that is substantially similar to~~

1 ~~the initial violation for which a cure period under~~
2 ~~paragraph (A) of this item (6) was provided the credit~~
3 ~~union, no additional cure period shall be required~~
4 ~~before another order is issued assessing a civil~~
5 ~~penalty for the subsequent violation. Any such order~~
6 ~~shall take effect upon service of the order, subject to~~
7 ~~the credit union's right to request a hearing as~~
8 ~~described in paragraph (C) of this item (6). If a~~
9 ~~hearing is requested, the order shall be stayed until a~~
10 ~~final administrative order is entered.~~

11 This item (6) shall not apply to violations separately
12 addressed in rules as authorized under item (7) of this
13 Section.

14 (7) Except for the fees established in this Act, to
15 prescribe, by rule and regulation, fees and penalties for
16 preparing, approving, and filing reports and other
17 documents; furnishing transcripts; holding hearings;
18 investigating applications for permission to organize,
19 merge, or convert; failure to maintain accurate books and
20 records to enable the Department to conduct an examination;
21 and taking supervisory actions.

22 (8) To destroy, in his discretion, any or all books and
23 records of any credit union in his possession or under his
24 control after the expiration of three years from the date
25 of cancellation of the charter of such credit unions.

26 (9) To make investigations and to conduct research and

1 studies and to publish some of the problems of persons in
2 obtaining credit at reasonable rates of interest and of the
3 methods and benefits of cooperative saving and lending for
4 such persons.

5 (10) To authorize, foster or establish experimental,
6 developmental, demonstration or pilot projects by public
7 or private organizations including credit unions which:

8 (a) promote more effective operation of credit
9 unions so as to provide members an opportunity to use
10 and control their own money to improve their economic
11 and social conditions; or

12 (b) are in the best interests of credit unions,
13 their members and the people of the State of Illinois.

14 (11) To cooperate in studies, training or other
15 administrative activities with, but not limited to, the
16 NCUA, other state credit union regulatory agencies and
17 industry trade associations in order to promote more
18 effective and efficient supervision of Illinois chartered
19 credit unions.

20 (Source: P.A. 97-133, eff. 1-1-12.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.